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| 10/070,602      | 09/13/2002  | Stuart Earl Crispin Miller | JAMES61.001 APC     | 7647             |

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EXAMINER

KOKABI, AZADEH

ART UNIT PAPER NUMBER

3743

DATE MAILED: 01/09/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

0012

**Office Action Summary**

Application No.

10/070,602

Applicant(s)

MILLER, STUART EARL CRISPIN

Examiner

Azy Kokabi

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 37-54 is/are pending in the application.
- 4a) Of the above claim(s) 1-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 37 and 39-54 is/are rejected.
- 7) ☐ Claim(s) 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3743

***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the insert having concertina sides in claim 45 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

2. The specification is objected to because reference characters "122" and "133" have both been used to designate "catch" (see page 17). Correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 37, 39-43, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holley (U.S. Patent No. 4,884,841) in view of Kumarasurier (U.S. Patent No. 5,444,877).

Holley discloses a seat-assisting device for a toilet having a frame and support (#10 and #80), which clamps and is releasable from a toilet bowl (see figure 1). Holley discloses telescoping legs (#22) that allows the toilet assembly to be raised and lowered (see at least abstract). Holley further discloses means for fixing (#46 and 48) the legs to support the toilet seat assembly at two or more heights above the toilet seat. Figure 9 shows that the telescoping legs are fluid actuated (also see column 5, lines 65-68 through column 6, lines 1-53). Holley discloses detents (#48a-c) and means to operable engage and disengage the detents (#46). Figure 1 shows an insert (#86) that is engageable with the seat and is adapted to conform to the shape of the bowl. Holley further discloses an armrest (#38).

Holley fails to disclose a toilet seat lid opening mechanism.

Kumarasurier ('877) discloses a foot actuated lever mechanisms for lifting a toilet seat. The device of Kumarasurier has a foot lever (#16) pivotally connected to the toilet lid (#24) and a catch (see figure 3b) biased to hold the lid in a plurality of rotated attitudes. Finally, Kumarasurier discloses a foot peddle (#14) used to release the catch (see at least the abstract). Kumarasurier teaches that a hand lever may also be used (see column 6, lines 28-40). The lift device of Kumarasurier is useful in a public toilet, among other uses, where a user would refrain from touching the toilet seat for sanitary purposes (see column 1, lines 18-24). The device is also used in situations where a user wishes to store or retrieve heavy articles into or from a container and he would prefer opening or closing the lid without laying the article down (see column 1, lines 24-27).

Art Unit: 3743

In view of Kumarasurier, it would have been obvious to have provided for a toilet seat assisting device of Holley with a toilet lid opener in order to provide for sanitary environment and enable users to easily open and close a toilet lid.

Holley further fails to disclose telescoping legs that are power actuated. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided for a power actuated toilet seat lifter, since it has been held that broadly providing a power actuated means to replace manual or hydraulic operated activity which has accomplished the same result involves only routine skill in the art (see MPEP 2144.04).

5. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of Fullbright, Jr. ('062).

As previously, discussed in paragraph 4 above, Holley discloses all the limitations as set forth, however Holley fails to disclose an insert that incorporates concertina sides.

Fullbright, Jr. discloses a toilet seat having an insert that has a concertina sides. Such an insert is a splash shield which prevents splashing and waste residue from penetrating to the rear of the toilet bowl as the toilet seat is lifted.

In view of Fullbright, it would have been obvious to one of ordinary skill in the art to have provided for an insert having concertina sides in order to prevent splashing when the toilet seat is lifted.

6. Claims 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of Torii (U.S. Patent No. 5,095,555).

As previously, discussed in paragraph 4 above, Holley discloses all the limitations as set forth, however Holley fails to disclose a toilet seat heater.

Art Unit: 3743

Torii et al discloses a toilet seat structure having a heater and thermo-sensor wires that is connected to a controller which prevents excessive heating (see figure 3). The toilet seat heater is sued to provide comfort to a user at a desired temperature (see at least column 1).

In view of Torii, it would have been obvious to one of ordinary skill in the art to have provided the toilet seat assembly of Holley with a toilet seat heater in order to provide warm comfort to users without the dangers of excessive heating.

7. Claims 49-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of Kumarasurier in further view of Mizuno ('933).

As previously, discussed in paragraph 4 above, Holley and Kumarasurier disclose all the limitations as set forth, however Holley fails to discloses a wheelchair apparatus.

Mizuno discloses a toilet wheelchair apparatus that may be used by a user, such as a sick patient, an elderly or bodily crippled person who needs to use a wheelchair for travel. The wheelchair of Mizuno is adjusted so that, when the seat plate (#21) is at its lower position, it can be located at the level of an ordinary western style toilet (see column 3, lines 5-15).

Therefore, as taught by Mizuno, it would have been obvious to have incorporated the device of Holley into a movable wheelchair apparatus with all the accessories found ordinarily in a wheelchair in order to help the elderly or a sick patient to easily move around and use the toilet.

***Allowable Subject Matter***

8. Claim 38 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments with respect to claims 37-54 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azy Kokabi whose telephone number is (703) 306-4154. The examiner can normally be reached on Monday- Friday, 6:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3588.

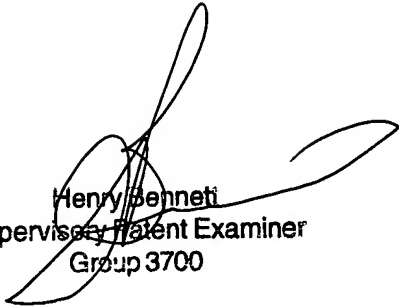
Application/Control Number: 10/070,602

Page 7

Art Unit: 3743

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

AK



Henry Bennett  
Supervisory Patent Examiner  
Group 3700